

(1) On an appeal from a preliminary order, the Appeals Board has jurisdiction to review a finding that claimant failed to give timely notice. K.S.A. 44-534a. This jurisdiction includes authority to determine whether claimant has established just cause for failure to give notice within ten (10) days.

(2) The Appeals Board agrees with the decision of the Administrative Law Judge and finds claimant has failed to establish either that he gave timely notice or that he had just cause for failing to do so.

Claimant alleges he suffered injury arising out of and in the course of his employment on June 15, 1994. Claimant filed an application for hearing July 29, 1994. As filed, the Application for Hearing alleged the accident occurred July 15, 1994. At the preliminary hearing claimant amended the date to June 15, 1994.

The evidence presented indicates claimant told his supervisor he was having numbness in his hands and he did so sometime before July 14, 1994, the last day he worked for respondent. Claimant did not tell the supervisor the problem was work related. The supervisor confirms that claimant showed him a note from his doctor but did not relate the condition to work. The evidence does not establish when this note was given to the supervisor. Claimant's counsel speculates that it must have been shortly after claimant's medical exam of June 16, 1994. There is, however, no evidence to support this speculation. Claimant also saw the physician July 13, 1994, while still working for respondent but more than ten (10) days after the alleged date of accident. The record also suggests claimant's injury is from repetitive work activities but contains no evidence the injury worsened after June 14, 1994. The Appeals Board, therefore, finds claimant failed to meet his burden of establishing notice within the ten (10) days required by K.S.A. 44-520.

Where notice is not given within ten (10) days, the claim is barred unless claimant establishes just cause for failure to give ten (10) day notice and notice is given within seventy-five (75) days. In this case notice was given within seventy-five (75) days. The claim would not be barred if claimant had just cause for not giving notice earlier. Claimant's counsel argues claimant did not give notice because he did not know what his problem was or that it was work related until more than ten (10) days from the alleged date of accident. Whether lack of information about the injury would be just cause, it is not, however, an issue presented by the evidence. Claimant provided no testimony indicating why he did not notify respondent earlier. He testified he did notify the employer of a problem with his hands but he did not recall when. The Appeals Board finds claimant has not met his burden of showing either notice within ten (10) days or just cause for the failure to give such notice.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Order entered by Administrative Law Judge George R. Robertson, dated October 18, 1994, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: E. Dexter Galloway, Attorney at Law, Hutchinson, KS
Scott J. Mann, Attorney at Law, Hutchinson, KS
George R. Robertson, Administrative Law Judge
George Gomez, Director